IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1303 OF 1996

Smt.Pramila Dattatray Kamble
and others ...Appellants

vs.

Nivrutti Krishna Jadhav & Ors. ...Respondents

Mr.D.S.Sawant for the Appellants
Mr.S.S.Vidyarthi for Respondent No.3.

CORAM: A.S.OKA, J.
DATED: MARCH 7 & 8, 2006.

ORAL JUDGMENT:

1. This Appeal is by original claimants in a Claim Petition filed under the Motor Vehicles Act, 1939. The Applicants are the legal representatives of the deceased Dattatraya Nana Kamble who died on account of injuries sustained in the motor accident.

2. After the contest by the concerned opponents, the claim petition was partly allowed by the learned Member of the Tribunal and Owner of the vehicle and the Insurance Company were jointly and severally directed to pay a sum of Rs.67,000/- as compensation with interest at the rate of 12% p.a. The Tribunal held that the accident occurred due to rash and negligent driving of the truck owned by the Respondent No.1. None of the findings recorded by the Tribunal have been challenged by either owner or by the Insurance Company. The only question which arises for

consideration in this Appeal is whether the Appellants are entitled to enhancement in the compensation awarded by the Tribunal. Therefore, I am referring to the facts which are relevant for the purposes of deciding the quantum of compensation.

3. Shri Sawant learned Counsel appearing for the Appellant submitted that the age of the deceased at the time of accident was only 38 years. He pointed out that the deceased was employed as a teacher in a Zilla Parishad school. At the time of death he was drawing a salary of Rs.1185.40. He relied upon the document at Exh.44 which is the certificate issued by the Head Master of the school in which the deceased was employed. He submitted that the learned Member has taken a sum of Rs.500/- as the amount which must have been spent by the deceased per month for himself. He pointed out that deduction of Rs.500/- is certainly on the higher side. He submitted that the multiplier of 10 adopted by the Tribunal is on the lower side and multiplier should have been at least 16. Shri Sawant placed reliance on various decisions of the Apex Court. A reference is made to the said decisions in the later part of the judgment. Shri Vidyarthi appearing for Respondent No.3-Insurance company submitted that while computing the multiplicand only the net salary after making deductions has to be taken into consideration. He placed reliance on certain decisions of the Apex Court in that behalf. Relying upon the two recent decisions of the Apex

Court, he submitted that the maximum multiplier which can be allowed in the present case is 12. He submitted that considering the prevailing rate of interest on the bank deposits, interest at the rate of 7.5 % can be awarded. I have referred to the decisions relied upon by Shri Vidyarthi in the subsequent paragraphs of this Judgment.

4. I have considered the rival submissions. The Tribunal observed that the pay slip of the deceased produced at Exh.54 shows that the pay of the deceased after deductions was Rs.1104.40. The learned Member of the Tribunal deducted a sum of Rs.500/- per month on account of expenditure which used to be incurred by the deceased on himself. The learned Judge came to the conclusion that the multiplicand will be Rs.8,200/-. He capitalized the said amount by applying the multiplier of 10. Accordingly, he awarded total compensation of Rs.82,000/- with interest at the rate of 12% p.a. from the date of application till the realization.

5. The widow of the deceased examined herself. She deposed that the deceased was employed as a teacher and was drawing a salary of Rs.1200/- p.m. One Mr.Nizam Shaikh was examined as a witness who was working in the school in which the deceased was employed. He brought salary register before the Tribunal. The extract of salary register was taken on record. He deposed that as per the salary register a sum of Rs.1185.40 was paid to the deceased for the month of June

1985. So far as the salary for the month of July 1985 is concerned, he stated that there were total deductions of Rs.677.40. Out of total deductions, a sum of Rs.150/- was deducted towards recurring deposit in the post and a sum of Rs.25/- was deducted on account of teachers' bank contribution. He stated that the total sum of Rs.390/- was deducted on account of instalment of loan. He stated that the school was run by the Zilla Parishad and the salary was paid by the Zilla Parishad.

6. As far as deductions are concerned, it is obvious that the deduction of Rs.150/- which was going towards the postal deposit will have to be ignored as in fact the deceased was receiving the said amount and only for convenience it was transferred to the Postal Department. Even assuming that the other deductions made such as one towards the repayment of the loan can be taken into consideration, the take home salary of the deceased cannot be less than Rs.580/- p.m. The age of the deceased at the time of his demise was 38 years. Shri Sawant submitted that while calculating the multiplicand future prospects of increase in the salary will have to be considered. Shri Vidyarthi submitted that there was no evidence led by the original Applicant to prove that there was a possibility of enhancement in the salary of the deceased.

7. The evidence on record shows that the deceased was a

permanent employee of the Zilla Parishad. As per the certificate at Exh.54, dearness allowance paid for July 1985 to the deceased was Rs.690/-. Considering the fact that the deceased had a protected employment with Zilla Parishad and considering the fact that the judicial notice can be taken of subsequent increase in the dearness allowance and a reasonable increase in the pay scales, this is not a case where it can be said that future prospects of increase in the salary cannot be considered.

8. Paragrah 19 of the decision reported in (1994) 2 S.C.C. page 176 (General Manager, Kerala SRTC Vs. Susamma Thomas) the Apex Court held thus :

"19. In the present case the deceased was 39 years of age. His income was Rs.1032 per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or

less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs.1032 per month. We think having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs.2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan on bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier. In the present case we can take about Rs.1400 per month or Rs.17,000 per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs.17,000 X 12 = Rs.2,03,000) to which is added the usual award for loss of consortium and loss of the estate each in the conventional sum of Rs.15,000."

9. It is not axiomatic that in every case of death before the Claims Tribunal there has to be a very specific evidence regarding prospects of increase in the salary or income. If the material on record is sufficient to justify a reasonable inference that there were prospects of future increase in the salary, the test adopted by the Apex Court in the aforesaid decisions will have to be applied. In case of State Government or Zilla Parishad permanent employees such a conclusion can be drawn. It will be pertinent to note that in case of Susamma Thomas (supra) the Apex Court has adopted the test in case of a deceased whose age was 38 years. A reference will have to be made to the ratio of the decision relied upon by Shri Vidyarthi in the Judgment reported in (2005) 8 S.C.C. page 473 (Managing Director, TNSTC Ltd. Vs. K.I.Bindu and others). The Apex Court considered the earlier decisions in case of Susamma Thomas (supra) as well as another decision reported in Trilok Chandra and held that multiplier appears to have been adopted by the Apex Court in the said two decisions taking a note of prevailing rates of bank interest. In this case of K.I.Bindu the victim was 34 years old and the Apex Court adopted the multiplier of 13. The same view is taken by the Apex Court in a decision reported in (2005) 6 S.C.C. page 236 (T.N.State Transport Corporation Ltd. Vs. S. Rajapriya and others). In the said decision the Apex Court has referred to the earlier decisions in case of Susamma Thomas (supra) and Trilokchandra. In paragraph 16 the Apex Court observed thus:

> "16. In Susamma Thomas case it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 the multiplier of 18 as was adopted in Trilok Chandra Case appears to be appropriate. In fact in Trilok Chandra case, after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would in respect of a person in the age group of 60 to 70, which is the normal retirement age.

10. What has been held by the Apex Court is that in case of Susamma Thomas (supra) the multiplier was worked out by taking a normal rate of interest which was prevailing at that time. The Apex Court noted that considering the declining rates of interest, multiplier has to be consequentially raised. The Apex Court in the facts of the case has applied multiplier of 12. The Apex Court further observed that highest multiplier of 18 will be applicable for age group of 21 to 24 when the ordinary Indian citizen starts independently earning. Similar view has been taken by the Apex Court in another decision reported in 2005 (10) S.C.C. page 720 (New India Assurance Co.Ltd. Vs. Charlie and another). The Apex Court has observed that appropriate mulitiplier will have to be applied taking into account the prevailing rates of interest.

11. Coming back to the facts of the present case, as held earlier, the prospects of future increase in the salary cannot be ignored as the deceased was a permanent employee of Zilla Parishad. In a matter like this while calculating compensation payable in a fatal accident case, by the very nature of proceedings an element guess work is always involved. Considering the facts of the case and the status of the deceased as a permanent teacher who was working in the Zilla Parishad school, for the purpose of calculating the multiplicand the income of the Applicant will have to be taken as Rs.1200/- per month. A sum of Rs.400/- will have to be deducted on account of personal expenditure. Thus, multiplicand of 9,600/- will have to be capitalized by using appropriate multiplier. Shri Vidyarthi submitted that in view of the recent trend which can be gathered from the decisions of the Apex Court, multiplier can be taken as 12 since the age of the deceased was 38 years. At this stage, reference will have to be made to the another decision reported in (2005) 11 S.C.C. page 387 The Apex Court in case of a deceased whose age was of 41 years applied multiplier of 15. In another decision reported in (1994) 2 S.C.C. page 189, the coordinate Bench of the Apex Court applied multiplier of 20 where the age of the deceased was 42 years.

12. In the present case, the widow has deposed that the deceased was 38 years old at the time of accident and the deceased had no vices. The deceased had settled down as he

had a permanent employment. Therefore, in my view, in this case a multiplier of 13 will have to be applied. Thus, the total compensation payable will be Rs.1,24,800/-. Coming back to the decision of the Apex Court in case of Sarla Dixit (supra) the Apex Court held that after calculating the compensation by applying the multiplier method a conventional amount of Rs.15,000/- will have to be added on account of loss of estate and consortium etc. Thus, the said amount of Rs.15,000/- will have to be added which makes total amount of Rs.1,39,800/-. Thus, the total entitlement of the compensation of the Applicant will be Rs.1,40,000/-. After deducting the amount paid under no fault liability the net amount is Rs.1,25,000/-.

13. That takes me to the other point of controversy regarding payment of interest. Shri Vidyarthi invited my attention to the decision of the Apex Court reported in 2001 A.C.J. page 428 (Kaushnuma Begum and others vs.New India Assurance Co.Ltd. and others). He pointed out that the case before the Apex Court arose out of accident which had taken place in the year 1986 and the claim petition was filed in the same year. Considering the provisions of the Motor Vehicles Act, 1939, the Apex Court came to the conclusion that the change in economic conditions and policy of Reserve Bank of India, interest rates have been lowered. That is why the Apex Court fixed the rate of interest at 9% p.a. in the said case. In the present case, interest has been awarded at

the rate of 12% p.a. No fault can be found with the Tribunal if at the relevant time rate of interest of 12% was awarded. There is no challenge to the rate of interest by the Insurance Company. Since the Appeal is being decided in the year 2006, as far as the amount enhanced by this Court is concerned, interest will be payable at the rate of 9% p.a. from the date of Petition till the realization of the amount.

14. Hence I pass the following order :

a) Appeal is partly allowed with proportionate cost through out.

b) The operative part of the impugned Judgment will be substituted by the following :

"i) The opponent Nos.1 and 3 will jointly and severally pay to the Applicants a sum of Rs.1,25,000/- (excluding the amount paid on account of No Fault Liability) by way of compensation.

ii) In addition to the said amount, the opponent Nos.1 and 3 shall jointly and severally pay interest at the rate of 12% p.a. on the amount of Rs.67,000/- from the date of filing the Claim Petition till the realization of the amount. On the balance amount of compensation, the opponent Nos.1 and 3 will pay

interest at the rate of 9% p.a. from the date of Petition till the realization of the amount.

iii) Out of the amount deposited by the opponent Nos.1 and 3 the Applicant Nos.1 to 7 will be entitled to 1/7th share each."

c) If the Respondent No.3 has paid/deposited any amount on the basis of the original award, necessary adjustment will be made accordingly.

d) Time of four months from today is granted to the Respondent No.3 to comply with this order.

Judge.